

U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA  
BRUNSWICK DIVISION

7/25/2001 15 31 0:59

*D. Taylor*  
S. DIST. GA.

DERRICK SMITH,

Petitioner,

vs.

CIVIL ACTION NO. CV205-051

UNITED STATES DISTRICT COURT,  
MIDDLE DISTRICT OF FLORIDA,  
JACKSONVILLE DIVISION, and  
JOSE VASQUEZ, Warden,

Respondents.

**ORDER**

After an independent review of the record, the Court concurs with the Magistrate Judge's Report and Recommendation, to which Objections have been filed. In his Objections, Smith contends that he has rightfully asserted that no other court can correct the manner in which he was convicted and sentenced. Smith also contends that because he timely raised an objection pursuant to Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed.2d 435 (2000), with the sentencing court, the Court of Appeals, and the Supreme Court, the retroactivity standard is inapplicable to his case. Smith also contends that the sentencing court incorrectly sentenced him to 360 months' imprisonment because the maximum sentence he could have received was 240 months' imprisonment. Smith asserts that the Magistrate Judge failed to address his claim that he did not enter his guilty plea voluntarily and knowingly. Finally, Smith asserts that if he is not entitled to be resentenced, he is automatically entitled to the reversal of his conviction.

Smith has failed to establish that the remedy afforded under section 2255 is inadequate or ineffective to challenge the legality of his detention. As detailed by the Magistrate Judge, Smith has filed numerous motions in the district of his conviction, including the section 2255 motion he filed in February 2005 in which he raised the identical claims as he does in the instant motion. Simply because the Middle District of Florida dismissed Smith's motion due to *Smith's* failure to obtain permission to file a successive § 2255 motion does not render § 2255's remedy inadequate or ineffective.

In sum, Smith's Objections are without merit. The Report and Recommendation of the Magistrate Judge is adopted as the opinion of the Court. Respondent's Motion to Dismiss (Doc. No. 4) is **GRANTED**. Smith's petition for writ of habeas corpus (Doc. No. 1) is **DISMISSED**. The Clerk of Court is hereby authorized and directed to enter an appropriate Judgment of Dismissal.

SO ORDERED, this 15<sup>th</sup> day of August, 2005.

  
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JUDGE, UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA

United States District Court  
*Southern District of Georgia*

SMITH

)

vs

) CASE NUMBER CV205-51

USDC, MDFL, ET AL

) DIVISION BRUNSWICK

The undersigned, a regularly appointed and qualified deputy in the office of the Clerk of this district, while conducting the business of the Court for said division, does hereby certify the following:

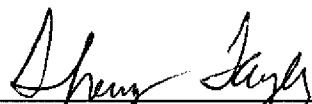
1. Pursuant to the instructions from the Court and in the performance of my official duties, I personally placed in the United States Mail a sealed envelope, and properly addressed to each of the persons, parties or attorneys named below; and
2. That the aforementioned enveloped contained a copy of the document dated 8/15/05, which is part of the official record of this case.

Date of Mailing: 8/15/05

Date of Certificate  same date,  or \_\_\_\_\_

Scott L. Poff, Clerk

By:



Sherry Taylor, Deputy Clerk

Name and Address

Amy Lee Copeland  
Derrick Smith, 28607-018, FCI Jesup, 2680 Hwy 301 S, Jesup, GA 31599

Copy placed in Minutes  
 Copy given to Judge  
 Copy given to Magistrate